

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
Western Division**

PACE LOCAL UNION 5-1967, et al.)
)
Plaintiffs,)
)
v.)
	Case No. C-01 301
)
INTERNATIONAL PAPER COMPANY,)
)
Defendant.)

**INTERNATIONAL PAPER COMPANY'S NOTICE
OF RECENT AUTHORITY IN SUPPORT OF
ITS MOTION FOR SUMMARY JUDGMENT**

International Paper Company ("International Paper") hereby notifies the Court of recent authority which supports its pending Motion For Summary Judgment. Specifically, International Paper brings to the Court's attention the Sixth Circuit Court of Appeals' recent decision in the related case of *Campbell v. International Paper*, No. 02-3658, slip op. at 1-2 (6th Cir. Dec. 2, 2003) (unpublished decision attached). *Campbell* arises out of the same Hamilton "B" Street sale as the *PACE* case and raises the same argument by the plaintiffs that the Effects Bargaining Agreement is governed by the Employee Retirement Income Security Act ("ERISA").

The Sixth Circuit's decision upheld Judge Beckwith's dismissal¹ of the plaintiffs' claim in *Campbell* and held that the Effects Bargaining Agreement does "not represent or constitute a Plan under ERISA because it does not require International Paper to exercise sufficient

¹ *Campbell v. International Paper Company*, No. C-02-88, (S.D. Ohio May 22, 2002) (unpublished decision attached).

discretion to meet the requirements identified in *Fort Halifax Packing Co., Inc. v. Coyne*, 482 U.S. 1, 11 (1987)."

In the instant matter, Plaintiff PACE Local Union 5-1967 ("PACE") and the other Plaintiffs claim, *inter alia*, that the Effects Bargaining Agreement negotiated between International Paper and PACE is a plan governed by ERISA. As the Sixth Circuit has already determined that this same Effects Bargaining Agreement is not an ERISA governed plan, Plaintiffs claims under ERISA must be dismissed.

Accordingly, and for the reasons stated more fully in International Paper's Motion and previously-filed Memoranda, International Paper submits that the Court should award International Paper summary judgment on Plaintiffs' claims.

Respectfully submitted,

INTERNATIONAL PAPER COMPANY

/s Michael A. Roberts
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been mailed first class, postage prepaid, this 8th day of December 2003 to: Robert I. Doggett, 215 East Ninth Street, Sixth Floor, Cincinnati, Ohio 45202.

/s Michael A. Roberts